

## TABLE OF CONTENTS

	<u>Page</u>
I. PURPOSE OF THIS HANDBOOK .....	1
II. RESPONSIBILITIES OF AGENCY HEADS, THE ATTORNEY-GENERAL AND THE CIVIL SERVICE COMMISSION IN THE ADMINISTRATION OF EXECUTIVE ORDER 10450 .....	1
A. Responsibilities of Agency Heads .....	1
B. Responsibilities of the Attorney-General .....	2
C. Responsibilities of the Civil Service Commission .....	2
III. RESPONSIBILITIES OF SECURITY HEARING BOARDS.....	3
A. Obtaining Information .....	4
B. Safeguarding Security .....	4
C. Fairness and Impartiality .....	4
IV. COMPOSITION OF SECURITY HEARING BOARDS .....	4
V. PRE-HEARING PROCEDURE .....	5
A. Availability of Case File .....	5
B. Study of Case File .....	5
C. Study of Agency Regulations .....	6
D. Inviting Witnesses .....	6
E. Rights of the Employee .....	6
VI. HEARING PROCEDURES .....	7
A. General .....	7
B. Privacy of Hearings .....	7
C. Manner of Opening Hearings .....	7
D. The Stenographic Record .....	8
E. Administering the Oath .....	8
F. Avoiding Improper Matters .....	8
G. Testimony and Cross-Examination .....	9

VII. MATTERS TO BE CONSIDERED IN DECIDING SECURITY CASES .....	<u>Page</u> 9
A. Security Standards .....	9
B. Types of Information and its Evaluation .....	11
1. Documentary .....	11
2. Testimony of Witnesses and Informants .....	11
3. Testimony of Employee .....	12
C. Evaluating Membership and Affiliation or Sympathetic Association with Organizations .....	12
D. Need for Additional Information .....	13
VIII. PREPARATION AND CONTENT OF THE DECISION .....	13.
A. Matters to be Considered .....	13
B. The Memorandum of Reasons .....	14
C. The Decision .....	15
Appendix A - Public Law 733, 81st Congress, approved August 26, 1950. (64 Stat. 476, 5 USC 22-1 et. seq.) .....	A1
Appendix B - Executive Order 10450, approved April 27, 1953, "Security Requirements for Government Employment." .....	B1
Appendix C - Letter from the President to Heads of Departments and Agencies as an Attachment to Executive Order 10450. ....	C1
Appendix D - Sample Order Establishing a Security Hearing Board. ....	D1
Appendix E - Comptroller General's Decision of May 26, 1953 - B-115113. ....	E1
Appendix F - Sample Statement for Use in Opening a Hearing. ....	F1

## GUIDES FOR MEMBERS OF SECURITY HEARING BOARDS

### I. PURPOSE OF THIS HANDBOOK

This handbook is a guide for members of security hearing boards established in accordance with the President's directive in a memorandum to heads of all departments and agencies accompanying Executive Order 10450, and pursuant to the act of August 26, 1950 (64 Stat. 476, 5 USC 22-1 et. seq.). Its primary purpose is to inform board members of the pertinent steps involved in the performance of their duties. It does not supersede instructions contained in agency regulations.

For the convenience of Board Members, the responsibilities of the agencies, the Attorney-General, and the Civil Service Commission have been summarized and incorporated in the Handbook. The act of August 26, 1950, Executive Order 10450, and the President's letter of transmittal are reprinted as Appendices A, B, and C.

### II. RESPONSIBILITIES OF AGENCY HEADS, THE ATTORNEY-GENERAL AND THE CIVIL SERVICE COMMISSION IN THE ADMINISTRATION OF EXECUTIVE ORDER 10450

#### A. Responsibilities of Agency Heads

Under the terms of Executive Order 10450 the head of each department and agency is responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of national security.

The Executive Order further provides that the head of each agency shall:

- Designate as sensitive, any position in the agency in which the occupant, because of the nature of the position, could bring about a material adverse effect on the national security.
- Make, or cause to be made, the investigations required by the Executive Order.
- Review, secure additional investigation if necessary and readjudicate the cases of all employees on whom a full field investigation was conducted under the provisions of Executive Order 9835, unless the initial adjudication was under a security standard commensurate with the standard in Executive Order 10450.
- Furnish to heads of other agencies any information which is developed or received which indicates that the retention of an employee may not be clearly consistent with the interests of national security.
- Readjudicate the case of any employee on whom such information is received from any source.

- Suspend, and terminate in accordance with the act of August 26, 1950 the employment of any person whose retention in employment would not, under the standards in Executive Order 10450, be clearly consistent with the interests of national security.
- Furnish to the Civil Service Commission such information as it may require to maintain the Security Investigations Index.
- Maintain investigative reports and materials in confidence.
- Cooperate with the Civil Service Commission to facilitate the accomplishment of the continuing study of the manner in which Executive Order 10450 is being implemented.

In his letter accompanying Executive Order 10450, the President also made agency heads responsible for designating, as requested by the Civil Service Commission, persons possessing the highest degree of integrity, ability, and good judgment to be available for service as members of security hearing boards of other departments and agencies.

#### **B. Responsibilities of the Attorney-General**

Under the terms of Executive Order 10450 the responsibilities of the Attorney-General are to:

- Make, through the Federal Bureau of Investigation, a full field investigation in any case in which any agency has developed information of the type described in Section 8(d) of the Executive Order.
- Furnishes to the agencies the names of each foreign or domestic organization, association, movement, group, or combination of persons which he has, after appropriate investigation and determination, designated as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of Government of the United States by unconstitutional means.
- Render to the agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

In accordance with the President's letter accompanying Executive Order 10450, the Attorney-General also supplies, to the agencies, sample regulations designed to establish minimum standards for the implementations of the security program.

#### **C. Responsibilities of the Civil Service Commission**

- Conducts all investigations required by Executive Order 10450, except those of
  - a. persons in positions excepted from the competitive service, when the employing agency has investigative facilities.
  - b. persons in positions in the competitive service when the investigation is conducted by the agencies pursuant to law or by agreement with the Commission.

- c. persons on whom information has been developed which requires full field investigation by the Federal Bureau of Investigation, as described in Section 8(d) of the Order.
- Authorizes, upon request of the agencies, lesser investigations than required by the Order, which meet requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees or aliens employed outside the United States.
- Establishes and maintains a Security Investigations Index.
- Makes, with the advice and collaboration of representatives designated by the National Security Council, a continuing study of the manner in which the order is being implemented by the agencies for the purpose of determining:
  1. Deficiencies in the agency security programs established under the Order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.
  2. Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.
- Reports to the National Security Council on the results of the continuing study and recommends corrective actions.
- Furnishes to the head of the agency concerned any information developed or received in the course of the continuing study.
- Determines eligibility for further employment in another agency of persons who have been terminated under the Act of August 26, 1950, Executive Order 9835, or any other security or loyalty program relating to officers or employees of the Government.

In accordance with the President's letter accompanying Executive Order 10450, the Commission is also responsible for maintaining rosters of persons nominated to serve as members of security hearing boards.

### III. RESPONSIBILITIES OF SECURITY HEARING BOARDS

A security hearing board is established by the head of each agency to conduct hearings, and to act in an advisory capacity to him in making its findings and recommendations. The prime function of a security hearing board in each individual case is (1) to insure that individuals privileged to be employed in the Federal service are reliable, trustworthy, of good conduct, and of complete and unswerving loyalty to the United States; and (2) to afford to the individual fair, impartial, and equitable treatment.

Subject to the administrative control of the head of the agency, the responsibilities of a security hearing board in the performance of its duties include the following:

#### **A. Obtaining Information**

- The employing agency will make available to the board a complete record of the case. Each board member will familiarize himself with all details in the case.
- The board will give every reasonable opportunity to the employee to be heard and to present evidence.
- The board, by means of pointed questions, will thoroughly explore all matters at issue and inform the employee of the derogatory information, as fully as security considerations permit, in order that he may clarify, explain, or refute that information.

#### **B. Safeguarding Security**

- All board members will be constantly alert to avoid any unauthorized or improper disclosure of information affecting the national security. Board members should be familiar with and abide by the security regulations of the agency for which the hearing is held.
- All members of hearing boards, particularly the chairman, are cautioned not to permit disclosure of confidential sources of information or investigative methods, or a line of questioning tending to identify such sources or methods.
- Generally, the charges to the employee will indicate the information which may be divulged to him without compromising confidential sources. Boards may elaborate or clarify details of the information, but under no circumstances is the identification of confidential sources permitted.

#### **C. Fairness and Impartiality**

- The board shall take whatever action is necessary to insure the employee full and fair consideration of his case at the hearing, as well as in the preparation of the findings and recommendations.
- The board members will avoid the attitude of a prosecutor but nevertheless will make sure that all relevant and procurable evidence is adduced for the record.
- The board, in making its determination, shall take into consideration the inability of the employee to meet charges of which he has not been advised specifically and in detail, because of security reasons, or to attack the credibility of witnesses who do not appear.

### **IV. COMPOSITION OF SECURITY HEARING BOARDS**

- Security hearing boards will be composed of not less than three officers or employees of the Federal Government, selected by the agency for which the hearing is to be held.

- Members of hearing boards will be selected by the agency for which the hearing is to be held from rosters maintained by the U. S. Civil Service Commission in Washington, D. C., and by its regional offices. The rosters are composed of employees, nominated by the heads of agencies as possessing the highest degree of integrity, ability, and good judgment.
- No officer or employee of the agency shall serve as a member of a hearing board in his own agency.
- The agency for which the hearing is to be held will issue the necessary orders convening a board. A sample order appears in Appendix D.
- A board member shall disqualify himself in any case in which he is acquainted with the employee.
- One member of the board will be designated as chairman. The chairman will be in full charge of the proceedings and will be responsible for the efficient conduct of the hearing.
- The agency that establishes the board may not reimburse the agencies that employ the board members for their salaries, travel, or other expenses. The Comptroller General, in a decision of May 26, 1953 (see B-115113 in Appendix E), ruled that the cost of furnishing members of hearing boards "is a necessary expense of the agencies furnishing the employees."

## V. PRE-HEARING PROCEDURE

### A. Availability of Case File

- The case file will be made available to security hearing board members by the personnel security officer\* of the agency concerned in advance of the hearing.
- Board members are responsible for safeguarding each file made available to them.
- Unauthorized persons must not be permitted to have access to the file, and its contents must not be discussed with such persons.

### B. Study of Case File

- Each board member will make a careful study of the case file prior to the hearing.

---

\*NOTE: Wherever the term "personnel security officer" is used in this handbook, it also refers to any other official designated to perform this work.

- Board members must be informed in the techniques and activities of the Communist Party and of each Communist, subversive, or totalitarian group or organization which may be involved in the case to be heard. If a board member is not satisfied with the information available concerning any such organization as contained in the file, he will request the personnel security officer to furnish necessary additional information.
- When studying the case file prior to the hearing, board members must bear in mind that the employee has not yet introduced all his testimony, and must avoid forming any convictions as to the eventual determination of the case.

### **C. Study of Agency Regulations**

- Board members will familiarize themselves with the security regulations of the agency for which they are conducting the hearing. They will also study the provisions of the act of August 26, 1950 (64 Stat. 476, 5 USC 22-1 et. seq.) and Executive Order 10450.

### **D. Inviting Witnesses**

- Generally, the personnel security officer will have invited the witnesses.
- In addition, the security hearing board, in its discretion, may invite any person to appear at the hearing and testify.
- Special Agents of the Federal Bureau of Investigation may be invited, and will be made available, to testify whenever they are in a position to furnish competent evidence. Special Agents will not, however, participate otherwise in the proceedings, nor will they be made available merely to interpret information appearing in their investigative reports.
- All invitations will be extended, if possible, a reasonable time in advance of the hearing to afford witnesses a reasonable opportunity to attend.
- Invitations will state the time and place of the hearing and will state that the board cannot pay witness fees or reimbursement for travel or other expenses.
- Invitations by letter, duly posted, will be sufficient.

### **E. Rights of the Employee**

- It is the responsibility of the board to make sure, within a reasonable time prior to the hearing, that the employee has been informed of his right (1) to participate in the hearing, (2) to be represented by counsel of his choice, and (3) to present witnesses and offer other evidence in his own behalf and in refutation of the charges brought against him.



## **VI. HEARING PROCEDURES**

### **A. General**

- Hearings before Security Hearing Boards shall be conducted in an orderly manner, and in a serious, business-like atmosphere of dignity and decorum, and shall be expedited as much as possible.
- Not less than three members will be present at all stages of the hearing.
- The conduct of the board members will be characterized by fairness and impartiality.
- The board chairman will be in full charge of the proceedings and is charged with the responsibility for the efficient conduct of the hearing.
- Whenever the employing agency is represented by an attorney-advisor, he may assist the board by questioning witnesses.

### **B. Privacy of Hearings**

- All hearings shall be private.
- Only the following shall be present:
  1. Members of the Board.
  2. The employee and his counsel.
  3. Agency employees concerned.
  4. The stenographer or stenographers.
- A witness shall be present only when he is actually testifying.
- These instructions as to privacy of hearings will be followed unless the agency regulations provide otherwise.

### **C. Manner of Opening Hearings**

- Hearings shall be opened by the reading of the letter setting forth the charges against the employee, and the statements and affidavits made by the employee in answer to such charges. All of these will be included in the transcript.
- The employee shall be informed by the board of his right (1) to participate in the hearing, (2) to be represented by counsel of his choice, (3) to present witnesses and to offer other evidence in his behalf and in refutation of the charges brought against him, and (4) to cross-examine any witnesses offered in support of the charges.

- The introductory statement will include a statement to the effect that the transcript of the hearing will not include all material in the file of the case, in that it will not include reports of investigation, which are confidential; also, that it will not contain information concerning the identity of confidential informants or information which would reveal the source of confidential evidence; and that it will contain only the evidence and testimony actually taken at the hearing.
- A sample opening statement is attached as Appendix F.

#### **D. The Stenographic Record**

- A complete verbatim stenographic transcript shall be made of the hearing by a qualified reporter, and the transcript shall constitute a permanent part of the record.
- The board will exercise precaution to insure that the transcript is a true and accurate record of the proceedings.
- An exception will be made when a witness who testifies before the Board is not willing to testify in the presence of the employee and his counsel. In this event, such testimony will not appear in the transcript, but will be a part of the complete record of the case.

#### **E. Administering the Oath**

- Testimony shall be given under oath or affirmation, which will be administered by an employee of the agency concerned who has been authorized to administer oaths, as provided in 5 USC 16a.

#### **F. Avoiding Improper Matters**

- Strict legal rules of evidence shall not be binding on the Board, but reasonable restrictions shall be imposed as to the relevancy, competency, and materiality of matters considered.
- All possible care will be used not to inject into charges, hearings, or any other phase of a security proceeding, matters relating to the individual whose case is under consideration which are improper or incompetent, or which are not relevant to the determination of the individual's status with regard to the national security.
- As an example of matters that must be avoided to comply with provisions of law and basic rules of the Civil Service Commission, discrimination shall not be exercised because of an employee's religious opinions or affiliations, or because of his marital status or his race, or, except as may be required by law, because of his political opinions or affiliations.
- In view of these fundamental requirements, the board will make sure that any material prepared, and questions asked at hearings, are free from any reference that might be construed as improper.

- Throughout the proceedings and subject to the security restrictions necessarily imposed, every effort will be made to aid the individual to secure a full and fair consideration of the matter under consideration.
- Boards are not empowered to pass upon so-called legal or constitutional objections to the procedure under the security program. The board will in no case permit lengthy argument or diverse motions relative to the legality or propriety of the hearing and other procedures of the board with resulting loss of time and delay caused by the consideration given to such motions. Submission of such motions before the board will be confined to the filing of written motions or objections to be made part of the file. No oral arguments on them will be permitted, nor will the board undertake to consider or decide any such motion or contention.

#### **G. Testimony and Cross-Examination**

- While hearing boards may invite any person to appear at the hearing and testify, they shall not be bound by the testimony of such witnesses by reason of having called them. The board shall have full right to cross-examine them.
- If a person who has made charges against the employee and who is not a confidential informant is called as a witness but does not appear, his failure to appear shall be considered by the board in evaluating such charges, as well as the fact that there can be no payment by the Government for travel of witnesses.
- Both the Government and the employee may introduce such evidence as the board deems proper in the particular case.
- The employee or his counsel shall have the right to control the sequence of such witnesses as shall be offered by or on behalf of the employee; the board, in its discretion, will control the sequence of other witnesses.
- Reasonable cross-examination by the employee or his counsel shall be permitted.
- The hearing board shall give due consideration to documentary evidence developed by investigation, including party membership cards, petitions bearing the employee's signature, books, treatises or articles written by the employee, and testimony by the employee before duly constituted authorities. The fact that such evidence has been considered shall be made a part of the transcript of the hearing.

### **VII. MATTERS TO BE CONSIDERED IN DECIDING SECURITY CASES**

#### **A. Security Standards**

- The standards under which security cases will be decided are set forth in Executive Order 10450. They are as follows:

- "a. No person shall be employed, or retained as an employee, in the Federal service unless the employment of such person is clearly consistent with the interests of the national security."

NOTE: The sample security regulations supplied by the Attorney General define "national security" as follows: "As used herein, the term 'national security' relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all other illegal acts designed to weaken or destroy the United States."

- "b. Information regarding an applicant for employment or an employee, which may preclude a finding that his employment or retention in employment is clearly consistent with the interests of the national security shall relate, but shall not be limited, to the following:

"(1) Depending on the relation of the Government employment to the national security:

"(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

"(ii) Any deliberate misrepresentations, falsifications or omission of material facts.

"(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

"(iv) An adjudication of insanity, or treatment for serious mental or neurological disorder without satisfactory evidence of cure.

"(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

"(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

"(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

- "(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.
- "(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.
- "(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.
- "(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States."

## **B. Types of Information and Its Evaluation**

- The information to be considered by the security hearing boards can be grouped into three categories: Documentary, testimony of witnesses and informants, and testimony of the employee.
- 1. Documentary
  - Examples of documentary information are party membership cards, petitions bearing the individual's signature, books, treatises or articles written by the employee, voting registration, official correspondence, announcements of sponsored meetings, and police and court records.
  - For the purpose of this program, documentary information includes not only the actual papers, books, lists and other written instruments and photostatic copies of such written instruments but also, when circumstances prevent obtaining such written instruments, statements from entirely reliable sources that such instruments were in existence and had been examined.
  - Documentary information properly authenticated will be accepted as being reliable unless the employee can furnish clear and affirmative proof to the contrary. His mere denial of such information will not be sufficient to warrant questioning the information. Such denial on his part may give rise to a question of his credibility.
- 2. Testimony of Witnesses and Informants
  - In evaluating information furnished by witnesses, including those appearing at the hearing, the board will consider how well the individual furnishing the

information knew the employee, the nature of their relationship, the period involved, or, in other words, whether or not the witness has been in a position to know or has had an opportunity to learn the facts concerning the employee. Likewise, the identity of the witness and his motivation, if any, may be significant.

- Confidential informants who furnish derogatory information usually will be characterized by the investigative agency as to their reliability. An informant will be described as "reliable" when information obtained from this source has in the past proved to be accurate. The designation of the informant as being of "unknown reliability" will signify only that the source has not been previously tested.
- Hearing boards in evaluating the testimony of confidential informants, as in the case of other witnesses, will consider how well the informant knew the employee, the nature of their relationship, etc., and will give due weight to the fact that an independent agency characterized the informants as either reliable or of unknown reliability.

### 3. Testimony of Employee

- In evaluating the testimony furnished by the employee at the hearing, his demeanor and attitude may be significant. Lack of cooperativeness or evasiveness are factors that should be given consideration.
- Of importance in determining an individual's credibility will be his statements at the hearing as compared with replies he gave to the charges or with statements in his application for Federal employment or in other documents. When the information furnished by the employee reflects false statements, misrepresentations, or concealment of material information, a conclusion that the charges are correct may be warranted.
- Under the standards of Executive Order 10450, any deliberate misrepresentations, falsifications, or omission of material facts, in themselves, and depending upon the relation of the Government employment to the national security, may preclude a finding that retention in employment is clearly consistent with the interests of national security.\*

### C. Evaluating Membership and Affiliation or Sympathetic Association with Organizations

- Under Executive Order 10450, the Attorney General furnishes to agencies the names of organizations, associations, movements, groups or combinations of persons, which

---

\*NOTE: It is assumed that the letter of charges will have contained a statement advising the individual that deliberate misrepresentations, falsifications or omission of material facts may constitute sufficient basis for removal. If it has not been so worded, and adverse action is not warranted on other grounds, the Board will refer the matter to the Personnel Security Officer for amendment of the charges.

IN-203

he has designated as totalitarian, Fascist, Communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

- The Attorney General has advised the Civil Service Commission, in his letter of December 30, 1953, that:

"Such designations of organizations are made solely for the purpose of guidance to departments and agencies in the discharge of their obligations under Executive Order No. 10450. Membership in, affiliation with, or sympathetic association with, any organization, whether specifically designated pursuant to this Executive Order or not, is but one of the factors by which a department or agency shall reach its determination. Section 8 of the Executive Order provides that organization membership is one of the matters concerning which information shall be developed as to whether the employment or retention in employment in the Federal service of persons being investigated is clearly consistent with the interests of national security."

- In evaluating memberships, affiliations, or associations the security hearing board will give consideration to the employee's statement of his reason for joining and his knowledge of the purposes of the organization. In all cases where membership, affiliation, or sympathetic association is an issue, the "Memorandum of Reasons" will set out the conclusion of the board as to these questions.

#### **D. Need for Additional Information**

- If the results of a hearing show that additional information is necessary before the hearing board can reach a decision in the case, the board will return the case to the Personnel Security Officer with a request for such additional information. Any such request will be specific as to the additional information required and will be limited to material matters that are essential to reaching a just determination.

### **VIII. PREPARATION AND CONTENT OF THE DECISION**

#### **A. Matters to be Considered**

- The investigation is conducted and the hearing held to determine whether the retention in employment in the Federal service of a particular individual is clearly consistent with the interests of the national security. Each case will be decided upon the facts in that particular case. Each decision will be based upon the merits of the specific case and not upon unfounded assumptions or distorted viewpoints. A board member's judgment must not be affected by bias or prejudice.

- The Attorney General has advised the United States Civil Service Commission that a security hearing board "in making its recommendation should take into consideration whether the employee is a security risk in his particular position in view of all of the derogatory information relating to him." In other words, the Board will consider the nature of the position occupied by the employee and in the light of the derogatory information.
- There can be no substitute for good judgment. A fair decision will be reached only after all the facts, favorable and unfavorable, have been analyzed impartially and have been given due weight in their proper perspective.
- In reaching its decision, the members of the board must remember that "the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States." (Executive Order 10450)
- In weighing individual items of derogatory information and in arriving at a decision, the interests of national security require that reasonable doubts be resolved in favor of the Government.
- The decision of the Security Hearing Board will be in writing and signed by all members. The decision will not contain the reasons upon which the board based its conclusion. A separate *Memorandum of Reasons* will be prepared for that purpose.

#### **B. The Memorandum of Reasons**

- The Memorandum of Reasons will be in writing and signed by all members of the board. Its purpose is to set out the board's reasoning in reaching its advisory decision.
- It is suggested that the Memorandum of Reasons bear that heading, and that for ready identification the first paragraph identify the subject of the case by his full name, the title of his position, location of employment, name of the bureau (if any) and agency, and any employment history which may be considered desirable or necessary.
- The next paragraph might set out when and where the hearing was held, whether the individual was represented by counsel, whether he testified and produced witnesses, whether the Government produced witnesses, and the names of the board members with identifying information as to each member's position and his agency.



- Thereafter, the board will clearly state the basis for its determination. Since this document is to be made a part of the file in the case and is for the use of the head of the agency in making the final decision, it should be prepared with that in mind. The amount of detail necessary will depend upon the facts and the complexity of the case. In some instances it will be necessary or desirable to explain the board's reasoning and conclusion concerning each charge. This probably will be done in every case in which the board reaches a decision favorable to the individual.
- When there is a dissent from the majority decision, the dissenting member or members will prepare and sign a Memorandum of Reasons showing wherein he or they differ from the majority.
- The signature of each member will bear the date of his signing.

### C. The Decision

- The board's decision will be in the form of a letter addressed to the head of the agency.
- The subject of the case will be clearly identified in the first paragraph, or in a heading. This identification will include name, position, division or bureau (if any), agency, place of employment, and date of suspension.
- The authority for the hearing, namely, the act of August 26, 1950 (64 Stat. 476, 5 USC 22-1 et. seq.), Executive Order 10450, and the regulations of the agency, will be clearly set out in the decision.
- The date and place of the hearing will be set out in the decision.
- All decisions, favorable or unfavorable, will be in the language of the Security Standard provided by Executive Order 10450. Suggested language for the decision is:  
"It is the decision of this Security Hearing Board that the employment of (Mr., Miss, or Mrs. -- full name of individual) is (or, is not) clearly consistent with the interests of national security."
- The final paragraph of the decision will state: "A memorandum setting forth the Board's reasoning in reaching this conclusion is attached."
- Each board member shall sign the decision. He will also note the date after his signature. The signature of the chairman will be followed by the title "Chairman," and the signature of the other members by the title "Member."
- If there is a dissent from the decision, the dissenting member will merely indicate before his signature the phrase "I dissent."

## APPENDICES

**Appendix A** - Public Law 733, 81st Congress, approved August 26, 1950.  
(64 Stat. 476, 5 USC 22-1 et. seq.)

**Appendix B** - Executive Order 10450, approved April 27, 1953, "Security Requirements for Government Employment."

**Appendix C** - Letter from the President to Heads of Departments and Agencies as an Attachment to Executive Order 10450.

**Appendix D** - Sample Order Establishing a Security Hearing Board.

**Appendix E** - Comptroller General's Decision of May 26, 1953 - B-115113.

**Appendix F** - Sample Statement for Use in Opening a Hearing.

## APPENDIX A

## ACT OF AUGUST 26, 1950 (PUBLIC LAW 733, 81ST CONGRESS)

**AN ACT To protect the national security of the United States by permitting the summary suspension of employment of civilian officers and employees of various departments and agencies of the Government, and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), as amended (5 U. S. C. 652), or the provisions of any other law, the Secretary of State; Secretary of Commerce; Attorney General; the Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Secretary of the Treasury; Atomic Energy Commission; the Chairman, National Security Resources Board; or the Director, National Advisory Committee for Aeronautics, may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee of the Department of State (including the Foreign Service of the United States), Department of Commerce, Department of Justice, Department of Defense, Department of the Army, Department of the Navy, Department of the Air Force, Coast Guard, Atomic Energy Commission, National Security Resources Board, or National Advisory Committee for Aeronautics, respectively, or of their several field services: Provided, That to the extent that such agency head determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his suspension and within thirty days after such notification any such person shall have an opportunity to submit any statements or affidavits to the official designated by the head of the agency concerned to show why he should be reinstated or restored to duty. The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of such suspended civilian officer or employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final: Provided further, That any employee having a permanent or indefinite appointment, and having completed his probationary or trial period, who is a citizen of the United States whose employment is suspended under the authority of this Act, shall be given after his suspension and before his employment is terminated under the authority of this Act, (1) a written statement within thirty days after his suspension of the charges against him, which shall be subject to amendment within thirty days thereafter and which shall be stated as specifically as security considerations permit; (2) an opportunity within thirty days thereafter (plus an additional thirty days if the charges are amended) to answer such charges and to submit affidavits; (3) a hearing, at the employee's request, by a duly constituted agency authority for this purpose; (4) a review of his case by the agency head, or some official designated by him, before a decision adverse to the employee is made final; and (5) a written statement of the decision of the agency head: Provided further, That any person whose employment is so suspended or terminated under the authority of this Act may, in the

discretion of the agency head concerned, be reinstated or restored to duty, and if so reinstated or restored shall be allowed compensation for all or any part of the period of such suspension or termination in an amount not to exceed the difference between the amount such person would normally have earned during the period of such suspension or termination, at the rate he was receiving on the date of suspension or termination, as appropriate, and the interim net earnings of such person: Provided further, That the termination of employment herein provided shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government: Provided further, That the head of any department or agency considering the appointment of any person whose employment has been terminated under the provisions of this Act may make such appointment only after consultation with the Civil Service Commission, which agency shall have the authority at the written request of either the head of such agency or such employee to determine whether any such person is eligible for employment by any other agency or department of the Government.

SECTION 2. Nothing herein contained shall impair the powers vested in the Atomic Energy Commission by the Atomic Energy Act of 1946 or the requirements of section 12 of that Act that adequate provision be made for administrative review of any determination to dismiss any employee of said Commission.

SECTION 3. The provisions of this Act shall apply to such other departments and agencies of the Government as the President may, from time to time, deem necessary in the best interests of national security. If any departments or agencies are included by the President, he shall so report to the Committees on the Armed Services of the Congress.

SECTION 4. Section 3 of the Act of December 17, 1942 (56 Stat. 1053), and section 104 of the Act of July 20, 1949 (Public Law 179, Eighty-first Congress), and section 630 of the Act of October 29, 1949 (Public Law 434, Eighty-first Congress), are hereby repealed.

## APPENDIX B

### EXECUTIVE ORDER 10450

#### SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.); section 9A of the Act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118 j); and the Act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

Section 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

Section 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Section 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or

B2

agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

Section 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

Section 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

Section 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the

department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

Section 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency, and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

Section 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

- (1) Depending on the relation of the Government employment to the national security;
  - (i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.
  - (ii) Any deliberate misrepresentations, falsifications, or omission of material facts.
  - (iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.
  - (iv) An adjudication of insanity, or treatment for serious mental or neurological disorder without satisfactory evidence of cure.
  - (v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.
- (2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

- (3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.
- (4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.
- (5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.
- (6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.
- (7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (7) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.



Section 9. (a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

Section 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Section 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no

specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

Section 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked. For the purposes described in section 11 hereof the Loyalty Review Board and the regional loyalty boards of the Civil Service Commission shall continue to exist and function for a period of one hundred and twenty days from the effective date of this order, and the Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency.

Section 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

Section 14. (a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

- (1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.
- (2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semi-annually, on the results of such study, and shall recommend means to correct any such deficiencies or tendencies.

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

Section 15. This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

April 27, 1953

Approved For Release 2002/03/20 : CIA-RDP78-04718A001800160003-4

July 1953

## APPENDIX C

### TO THE HEADS OF ALL DEPARTMENTS AND AGENCIES:

I have today issued an Executive order entitled "Security Requirements for Government Employment." This order establishes a security program for the executive branch of the Government and revokes Executive Order No. 9835 of March 21, 1947, under which the loyalty program has operated. The order extends the application of the provisions of the security act of August 26, 1950, 64 Stat. 476, to all the departments and agencies of the Federal government to which it has not heretofore been applicable.

With the issuance of this order, I have requested the Civil Service Commission to establish and effectuate a procedure whereby each department and agency of the Government will be furnished competent and disinterested Government employees from outside the department or agency concerned to sit as members of security hearing boards. Such boards, which would be composed of not less than three persons, would, in accordance with the act of August 26, 1950, be established by the head of the department or agency concerned and would act in an advisory capacity in making their findings and recommendations to the head of such department or agency.

I request the head of each department and agency to designate, as requested by the Civil Service Commission, persons possessing the highest degree of integrity, ability, and good judgment to be available for service as members of security hearing boards of other departments and agencies.

I have arranged that the Attorney General supply to the head of each department and agency sample regulations designed to establish minimum standards for the implementation of the security program under this order.

DWIGHT D. EISENHOWER

**APPENDIX D****SAMPLE ORDER CONVENING A SECURITY HEARING BOARD****DEPARTMENT OF \_\_\_\_\_**

1. It is hereby ordered that a Security Hearing Board be convened at \_\_\_\_\_  
(City and State)  
for the purpose of conducting a hearing, as prescribed by the Act of August 26, 1950  
(64 Stat. 476, 5 USC 22-1 et. seq.), and the security regulations of this Department, in  
the case of John Joseph Doe.
2. Mr. \_\_\_\_\_ of the \_\_\_\_\_ agency is hereby  
designated Chairman of said Board. Mr. \_\_\_\_\_ of the  
\_\_\_\_\_ Department and Mr. \_\_\_\_\_ of the  
\_\_\_\_\_ agency are hereby designated members of said Board.
3. The Board will convene at 9:30 A.M. on the twenty-second day of June 1953 in Room  
253 of the United States Customs and Court House for the purpose of conducting this  
hearing. Findings and recommendations will be submitted to me, in accordance with  
the Department's security regulations, as soon thereafter as possible.
4. All officers and employees of this Department are hereby directed to make available  
to this Board such aid and assistance as it may require for the expeditious conduct of  
this assignment. Mr. \_\_\_\_\_, Personnel Security Officer, is  
designated to provide necessary liaison.

---

Signature and Title of Authorizing Official

## APPENDIX E

C  
O  
P  
YCOMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

May 26, 1953

B-115113

Honorable Philip Young, Chairman

United States Civil Service Commission

My dear Mr. Young:

Reference is made to your letter of May 6, 1953, requesting a decision on certain questions arising in the Commission's implementation of its responsibilities under Executive Order 10450, dated April 27, 1953, entitled "Security Requirements for Government Employment."

The President's letter addressed to the heads of all departments and agencies and section 8 of the sample security regulations which accompanied the Executive Order provided for the establishment by the Commission of rosters of competent and disinterested Government employees from which agencies will select employees of other agencies to serve as members of security hearing boards. The President's letter also requests the head of each department and agency to designate, as requested by the Commission, competent employees to be available for serving as members of security hearing boards of other departments and agencies. You question the propriety of charging the appropriations of the agencies furnishing the hearing board members for the time such employees are performing services for other agencies, and you propose that the salary, and the per diem and travel costs, if any, be paid originally by the agency wherein the security board members are employed and that the amount thereof be billed to the agency for which the hearing is held.

B-115113

That proposal involves two questions: namely, (1) whether the appropriations of the agencies wherein the members are employed are available in the first instance for payment of the salaries and other expenses of their respective employees while serving as members of a security hearing board in other agencies and, if so, (2) whether the former agencies may be reimbursed for such costs.

Section 1 of the Executive Order extends the provisions of the act of August 26, 1950, Public Law 733, 64 Stat. 476, to all departments and agencies of the Government as authorized by section 3 of that act. The second proviso to section 1 of the act provides as follows:

"\* \* \* Provided further, That any employee having a permanent or indefinite appointment, and having completed his probationary or trial period, who is a citizen of the United States whose employment is suspended under the authority of this Act, shall be given after his suspension and before his employment is terminated under the authority of this Act \* \* \* (3) a hearing, at the employee's request, by a duly constituted agency authority for this purpose; \* \* \*." (Underscoring supplied.)

That provision of law undoubtedly places upon all departments and agencies to whom it applies a duty to establish a "duly constituted agency authority" to conduct the hearing referred to therein. A security hearing board established in accordance with the procedure provided in the President's letter and sample regulations would appear to constitute a "duly constituted agency authority for this purpose" as that term is used in the above-quoted provision of law. Hence, since the act of August 26, 1950, as thus implemented, requires all departments and agencies to furnish employees to serve as members of security hearing boards of other departments and agencies, the cost of furnishing the employees is a necessary expense of the agencies furnishing the employees and the applicable appropriations of such agencies may be considered available for the necessary expenses of their employees even though such employees are serving on boards in other agencies.

B-115113

However, such services are not within the provisions of section 601 of the act of June 30, 1932, 47 Stat. 417, as amended, 31 U.S.C. 686--authorizing reimbursement for services performed for other agencies--nor has there been found any other statutory authority for reimbursing the appropriations charged from the appropriations of the agencies for which the hearings are held.

Accordingly, insofar as your proposal provides for reimbursement by the agencies wherein the security hearing boards are established, it must be disapproved.

Sincerely yours,

Lindsay C. Warren

Comptroller General  
of the United States

## APPENDIX F

### SAMPLE OPENING STATEMENT

1. The Chairman opens the hearing with a statement somewhat as follows:

The Board will come to order: This Security Hearing Board has been constituted under the provisions of the security regulations of the (department or agency) promulgated pursuant to the authority conferred by Executive Order 10450 and the Act of August 26, 1950. This Board has been convened by order of (head of department or agency), dated \_\_\_\_\_. A copy of that order is available for your inspection but will not be read if there is no objection. The members of this Board are, myself (full name) an employee of (department or agency), and (names and agencies of other Board members).

2. Other persons in the room are identified and their connection with the case or their authority for being present is explained in very brief terms.
3. The Chairman then announces the case in hearing.
4. The Chairman announces that all testimony in the hearing is required to be given under oath or affirmation. The employee whose case is being heard is then asked to identify himself and is sworn.
5. The Chairman then continues with his opening statement along the following lines:

Investigation has disclosed information upon which the (department or agency) has determined that your removal from employment pursuant to the provisions of Executive Order 10450 and the Act of August 26, 1950 may be necessary. This information and your written reply to the charges issued to you on \_\_\_\_\_ constitute the issues in your case. You have asked that you be given a hearing before this Board in person in order to support your reply.

This is not a court of law and strict rules of evidence and court procedure are not followed. All information which is relevant or material to the issues in your case will be admitted and given such value as the Board shall decide. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire more fully into matters related to your case.

The Board desires to elicit all available information in connection with the issues which have been raised. The Board will give full consideration to the fact that it may not have been possible to acquaint you with certain confidential information which the investigation has revealed nor the sources of such information. The members of this Board sincerely desire that employment not be denied to persons whose employment would be clearly consistent with the interests of the national security. We also sincerely desire that all employees be afforded full protection against unfounded accusations.



You have the right (1) to participate in this hearing, (2) to be represented by counsel of your own choice, (3) to present witnesses and to offer other evidence in your behalf and in refutation of the charges brought against you, and (4) to cross-examine any witnesses offered in support of the charges. You can assist the Board in arriving at a fair and just determination in your case by full and frank answers to the questions the Board may have and by confining your attention to what is directly related to your case. Questions as to the legality or constitutionality of these proceedings are not in issue and cannot be decided by this Board. You are also warned that deliberate misrepresentations, false statements, or concealment of material facts in this hearing may preclude this Board's finding that your employment is clearly consistent with the interests of national security.

The transcript of this hearing will not include all material in the file of your case, in that it will not include reports of investigation, which are confidential. The transcript will not contain information concerning the identity of confidential informants or information which would reveal the source of confidential evidence. The transcript will contain only the evidence and the testimony actually taken at this hearing.

6. The letter setting forth the charges and the statements and affidavits by the employee in answer to such charges are then read.
7. Witnesses are sworn as they are called in to testify. Generally, the Government witnesses will be called first, questioned by the Board and cross-examined by the employee or his counsel.
8. Then the employee presents his case. He and his witnesses are usually questioned first by the employee's counsel and then by the Board.